IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1052 OF 2002.

Kutbuddin Kadar Ebaji. ... Petitioner.

Versus.

Hashmat Kutbuddin Ebaji & ors. ... Respondents.

Ms.Swati Sawant i/by Shri Asif Iqbal Ismail for the Petitioner.

Shri R.M.Gadhavi, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 24th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Petitioner and the learned A.P.P. for the State.

2. This petition under Article 227 of the Constitution of India is filed by the husband challenging the order passed by the leaned Judicial Magistrate First Class granting interim monthly maintenance of Rs.400/- to the Respondent No.1-wife and Rs.300/- each to Respondents Nos.2 and 3 who are minor daughters of the Petitioner. The submission made is that there was Talaq (divorce) between the Petitioner and the Respondent No.1 and therefore, the learned Judicial Magistrate First Class had no jurisdiction to entertain the application under section 125 of the Code of Criminal Procedure, 1973.

3. After hearing the learned Counsel for the Petitioner

and after perusing the impugned Judgment and order, I find that there is no merit in the said contention. This contention was specifically raised before the Addl.Sessions Judge. The learned Addl.Sessions Judge has rejected the said contention by holding that there was no proof of divorce. A perusal of the Judgment of the learned Magistrate shows that this point was not specifically agitated before the learned Magistrate. Hence no interference is called for in the petition under Article 227 of the Constitution of India.

4. It is pertinent to note that this Court had granted ad-interim relief in terms of prayer clause (c) subject to deposit of amount. There is no compliance made by the Petitioner of the said order.

5. There is no merit in the petition and the same is rejected.

Judge.